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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,017	08/07/2001	Carl J. Pacifico	1001-3	3051

23869 7590 09/25/2003

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 09/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/924,017

Applicant(s)

PACIFICO, CARL J.

Examiner

Lien T Tran

Art Unit

1761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 1-31.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700

Continuation of 5. does NOT place the application in condition for allowance because: applicant's argument is not persuasive for reason of record. Additionally, applicant argues the spray chilling techniques give the claimed microporous coating, especially when juxtaposed with the continuous fluid bed coatings in the prior art. This argument is not persuasive. The claims are directed at a product and bread dough containing such product. Thus, how the product is made does not determine the patentability of the product. Even if the Katz product is made by the fluid bed technology, it does not mean that the coating does not have any pore at . Applicant further argues the release of the coated leavening agent in Katz is at a range below 90 degree F and that the release is by an abrasion mechanism. This argument is not persuasive because it is not supported by factual evidence. Katz specifically discloses the coating melts at 97-143 degree F. They also teach heating the cans containing the dough at temperature range of 90-200 degree F. Thus, the coating does permit melting at temperature of 95degree F.

The declaration is not found to be persuasive. The declaration states the Durkote products in the Katz reference are encapsulated by fluid bed techniques as evident by personal conversations with the owner's of this production unit. There is no factual evidence given in the declaration that the Durkote products are encapsulated by fluid bed . Furthermore, even if the Durkote products are encapsulated by fluid bed, the claimed product does not define over the prior art because how the product is obtained does not determine its patentability. The claims are not directed at a method of encapsulating leavening agent. The limitation of encapsulating by spray chilling or not encapsulating by fluid bed is not in the claims. The declaration states fluid bed encapsulation techniques provide a fluid-tight, non porous seal on a particulate. This statement is not supported by factual evidence. .

Continuation of 10. Other: The 112 first paragraph rejection is withdrawn due to the amendment to claim 1..